

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**JONES COUNTY
NPDES Permit #5300600**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2007-WW-07**

**TO: Joe Cruise, Chairman
Jones County Board of Supervisors
PO Box 109
Anamosa IA 52205**

I. SUMMARY

This administrative consent order (Order) is entered into between Jones County and the Iowa Department of Natural Resources (Department) for the purpose of establishing a schedule to achieve compliance with applicable effluent and water quality standards for wastewater discharges generated in the unincorporated area of Jones County known as Fairview.

The parties hereby agree that Jones County shall undertake the schedule of compliance set forth in this Agreement in order to construct wastewater facility to serve Fairview in order to achieve compliance with applicable requirements.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Sue Miller
IDNR Field Office #1
909 West Main Street Ste 4
Manchester, IA 52507
Ph: 563-927-2640

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and chapter 567 Iowa Administrative Code (IAC) 10 which authorize the Director to assess administrative penalties.

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**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Jones County**

III. STATEMENT OF FACTS

1. The unincorporated community of Fairview in Jones County does not currently have a wastewater collection system that serves its residents or businesses. Fairview Terrace Mobile Home Park is located in Fairview and operates a wastewater treatment facility pursuant to NPDES Permit # 5300600. The facility serving Fairview Terrace Mobile Home Park has a history of noncompliance and is not capable of serving the entire community. The on-site treatment methods used by the residents of Fairview do not provide adequate treatment and most of the lots on which these systems are located are too small to accommodate expansion or upgrading.

2. On April 28, 2004, Jones County Sanitarian Sue Ellen Hosch observed several wastewater discharges to road ditches in Fairview. A sample of the water in one ditch was collected. The analysis of the sample found 950,000 CFU/100 ml fecal coliform. The analysis further indicated that the pollution was derived from human waste.

3. On May 18, 2004, the Department issued a Notice of Violation to Jones County. The Notice cited the County for the discharge of wastewater without a permit. The Notice further required the County to submit a plan of action within 90 days for eliminating all prohibited discharges originating in the community of Fairview.

4. On July 13, 2004, Jones County submitted a letter and a Plan of Action indicating that a consultant had been hired to prepare a feasibility study to determine the appropriate options for addressing the prohibited wastewater discharges in Fairview.

5. On November 1, 2004, Jones County submitted a Wastewater Treatment Facility and Collection System Study. The report recommends the construction of a controlled discharge lagoon system as the best alternative to address the violations in Fairview. The Study indicated an intent to apply for a Community Development Block Grant (CDBG), a United States Department of Agriculture (USDA) Rural Development grant or loans from these agencies.

6. On January 25, 2005, the Department met with representatives of the County. The County proposed the following schedule for completion of the required facility:

2005 - Complete income surveys for the affected community.

December 2005 - apply for funding.

March 2006 - receive funding commitment.

March through August 2006 - negotiate design concepts with USDA.

August 2006 - begin design.

December 2006 - submit design to DNR.

February 2007 - Receive bids for construction.

November 2007 - complete construction.

7. Jones County did not receive CDBG funding for 2006.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Jones County**

8. On April 26, 2006, Jones County notified the Department that alternative treatment options were being reviewed and that a new CDBG funding application would be submitted in December 2006.

9. During 2006, the Department and Jones County have agreed to a deadline of April 2008 to initiate construction of necessary improvements and a deadline of November 2008 to complete the required construction.

10. On January 23, 2007, Jones County informed the Department that a determination had been made to not seek CDBG funding. The project will be redesigned. An engineering firm was selected on January 10, 2007. Project design is underway.

9. Regardless of funding status, the unpermitted discharge of sewage in Fairview must cease in order to protect human health and the environment.

IV. CONCLUSIONS OF LAW

The Department and Jones County agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit.

2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Subrule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations as established in chapters 61 and 62 of the rules. The above-stated facts disclose a violation of these provisions.

V. ORDER

The Department orders and Jones County hereby agrees to the following compliance schedule, to be complied with individually or jointly with Fairview Terrace Mobile Home Park:

1. Jones County shall immediately undertake such design preparation, site selection, land acquisition, and consultation with the Department as are necessary to comply with the construction initiation and completion deadlines contained herein. A delay in the

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Jones County**

completion of these known prerequisites to construction shall not be a defense to the violation of the construction deadlines contained herein.

2. Jones County shall initiate construction of a new wastewater facility serving Fairview Mobile Home Park and unincorporated Fairview no later than April 1, 2008. **The failure to initiate construction by the deadline established herein shall result in the automatic assessment, by this Order, of a stipulated penalty in the amount of \$3,000; and**

3. Jones County shall complete construction of a new wastewater facility serving Fairview Mobile Home Park and unincorporated Fairview no later than November 30, 2008. Construction shall be deemed to be completed when the facility becomes operational. **The failure to complete construction by the deadline established herein shall result in the automatic assessment, by this Order, of a stipulated penalty in the amount of \$3,000.**

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at Chapter 567 IAC 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Jones County has achieved significant cost savings by failing to provide wastewater treatment facilities for the community of Fairview. The execution of this Order constitutes a good faith attempt to achieve compliance and therefore the Department has chosen not to assess an economic benefit penalty at this time. In the event of non-compliance with this Order, the Department reserves the right to consider past economic benefit in the assessment of future penalties.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Jones County**

major program priority of the federal and state pollution control agencies. Effluent limitations are established to protect human health and the environment. The ongoing failure of Jones County to provide wastewater treatment facilities has resulted in the discharge of effluent without a permit and in violation of the applicable regulations and effluent limitations. The actions of Jones County endangered the public and threatened the environmental health of the receiving waters of the state. In order to resolve this matter, the Department has chosen not to issue a penalty at this time. The stipulated penalties contained herein take into consideration the gravity of the underlying violations, but do not fully assess the penalties supported by this factor. In the event of non-compliance with this Order, the Department reserves the right to consider the history of continuing permit violations in the assessment of future penalties.

c. Culpability. Jones County has been delegated, by the State, the authority to review and approve onsite wastewater disposal systems for residents. Pursuant to this delegation, Jones County has the duty to ensure that these systems are constructed and operated in compliance with applicable standards. The discharge of wastewater in Fairview constitutes a failure by Jones County in its oversight and permitting duties in regard to these onsite systems. The stipulated penalties contained herein take into consideration the culpability of Jones County in regard to the underlying violations, but do not fully assess the penalties supported by this factor. In the event of non-compliance with this Order, the Department reserves the right to consider past conduct in the assessment of future penalties.

VII. WAIVER OF APPEAL RIGHTS

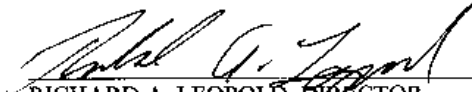
Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Jones County. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.191. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. However, the payment of stipulated penalties shall not be considered compliance with the underlying construction requirements of this Order.

The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Jones County**



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 7 day of
May, 2007



JONES COUNTY BOARD OF SUPERVISORS

Dated this 1 day of
May, 2007

Field Office #1; Jon Tack; Wayne Farrand; LC(1)